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10 THE FACEBOOK, INC. and MARK ZUCKERBERG

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14
15 THE FACEBOOK, INC. and MARK
ZUCKERBERG,

16 Plaintiffs,

17 v.

18 CONNECTU, INC. (formerly known as
19 CONNECTU, LLC), PACIFIC
NORTHWEST SOFTWARE, INC.,
20 WINSTON WILLIAMS, WAYNE CHANG,
and DAVID GUCWA,

21 Defendants.

Case No. 5:07-CV-01389-RS

**DECLARATION OF THERESA
SUTTON IN SUPPORT OF
PLAINTIFFS' REPLY IN SUPPORT
OF MOTION FOR PARTIAL
SUMMARY JUDGMENT RE
DEFENDANTS' LIABILITY
PURSUANT TO CALIFORNIA
PENAL CODE SECTION 502(C) AND
15 U.S.C. § 7704(A)(1) AND 15 U.S.C. §
7704(B)(1)**

Date: February 27, 2008
Time: 9:30 A.M.
Judge: Honorable Richard Seeborg

1 I, Theresa A. Sutton, declare as follows:

2 1. I am an associate at the law firm of Orrick, Herrington & Sutcliffe, counsel for
3 Plaintiffs Facebook, Inc. and Mark Zuckerberg in this action, and a member of the Bar of the state
4 of California. I make this declaration in support of Plaintiffs' Reply in Support of Motion of
5 Partial Summary Judgment re Defendants' Liability Pursuant to California Penal Code Section
6 502(c) and 15 U.S.C. § 7704(a)(1) and 15 U.S.C. § 7704(b)(1). I make this declaration of my
7 own personal knowledge and, if called as a witness, I could and would testify competently to the
8 truth of the matters set forth herein.

9 2. Attached hereto as **Exhibit A** is a true and correct copy of relevant excerpts from
10 the deposition of Mark Zuckerberg. **[SUBMITTED UNDER SEAL -- CONFIDENTIAL**
INFORMATION SUBJECT TO PROTECTIVE ORDER.]

12 3. Attached hereto as **Exhibit B** is a true and correct copy of Facebook, Inc.'s
13 Articles of Incorporation, dated July 29, 2004.

14 4. Attached hereto as **Exhibit C** is a true and correct copy of Part IV of the May 12,
15 2005, Federal Register, 16 CFR Part 316, Definitions, Implementation, and Reporting
16 Requirements Under the CAN-SPAM Act; Proposed Rule.

17 5. Attached hereto as **Exhibit D** is a true and correct copy of a screenshot from an
18 email in-box on the Facebook website.

19 6. Attached hereto as **Exhibit E** is a true and correct copy of an instant message
20 conversation between Mark Zuckerberg and Adam Goldberg, dated August 9, 2004. This
21 document was produced to Defendants in this action in response to a Rule 34 Request for
22 Production of Documents and is Bates numbered FBCA051217. **[SUBMITTED UNDER SEAL**
-- CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER.]

24 7. Attached hereto as **Exhibit F** is a true and correct copy of an instant message
25 conversation between Mark Zuckerberg and Fallick, dated August 6, 2004. This document was
26 produced to Defendants in this action in response to a Rule 34 Request for Production of
27 Documents and is Bates numbered FBCA051222. **[SUBMITTED UNDER SEAL --**
CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER.]

1 8. Attached hereto as **Exhibit G** is a true and correct copy of an email string between
2 Mark Zuckerberg and Scott Sassa, dated February 19, 2005. This document was produced to
3 Plaintiffs in this action in response to a Rule 34 Request for Production of Documents and is
4 Bates numbered FBCA001268. [SUBMITTED UNDER SEAL -- CONFIDENTIAL

5 **INFORMATION SUBJECT TO PROTECTIVE ORDER.]**

6 9. Attached hereto as **Exhibit H** is a true and correct copy of an email string between
7 Facebook and a user, Alexander Lee, dated February 20, 2005. This document was produced to
8 Defendants in the Massachusetts action in response to a Rule 34 Request for Production of
9 Documents and is Bates numbered FBMA0095515. [SUBMITTED UNDER SEAL --

10 **CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER.]**

11 10. Attached hereto as **Exhibit I** is a true and correct copy of an instant message
12 conversation between Defendant David Gucwa and Defendant Wayne Chang, dated January 24,
13 2005. This document was produced to Plaintiffs in this action in response to the February 21,
14 2007, subpoena *duces tecum*, which was served on February 23, 2007. The document is Bates
15 numbered GUCWA 0056-0063. Pages 56-60 also are part of Exhibit 9 of the Declaration of
16 Monte M.F. Cooper in Support of Plaintiffs' Motion for Partial Summary Judgment. Doc. No.
17 252.

18 11. Defendants mischaracterize the facts leading up to the scheduling of Facebook's
19 30(b)(6) witness. As Exhibit B to the Declaration of Scott Mosko shows, because Defendants had
20 not served a Notice of Deposition with specific topics on which they sought to depose Facebook,
21 I asked for more specificity. Mr. Mosko said he could not "at that time" provide more specificity,
22 despite the fact that his request for a witness related to two "general topics," namely the operation
23 of Facebook's servers and internet connections. Because Defendants refused to provide the
24 requisite specificity as to the 30(b)(6) topics, Facebook was forced to provide dates for a witness
25 who turned out not to be the appropriate choice. After Facebook provided this witness'
26 availability, Defendants served a notice of 12 detailed topics. As a result of the new topics,
27 Facebook was required to identify a different witness, who is scheduled to appear on Friday,
28 February 15, 2008.

1 I declare the foregoing is true and correct to the best of my knowledge.
2 Executed this 13th day of February, 2008, at Menlo Park, California.
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/s/ Theresa A. Sutton /s/

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on February 13, 2008.

Dated: February 13, 2008.

Respectfully submitted,

/s/ Theresa A. Sutton /s/
Theresa A. Sutton